

EXHIBIT 4

KEITH LEFFLER, NOVEMBER 03, 2004

1	IN THE UNITED STATES DISTRICT COURT	Page 1	1	PRESENT:
2	FOR THE SOUTHERN DISTRICT OF OHIO		2	HANLEY, ARONCHICK, SEGAL & PUDLIN,
3	WESTERN DIVISION		3	(30 North Third Street, Suite 700,
4			4	Harrisburg, Pennsylvania 17101,
5	J.B.D.L. CORP., d/b/a)		5	717-364-1004), by:
6	BECKETT APOTHECARY, et al.,)		6	MR. GORDON EINHORN,
7	Plaintiffs,)		7	appeared on behalf of Plaintiffs
8	-vs-) No. C-01-704		8	CVS Meridian, Inc. and Rite Aid
9	WYETH,)		9	Corporation;
10	Defendant.)		10	
11)		11	SCHIFFRIN & BARROWAY, LLP,
12	CVS MERIDIAN, INC. and)		12	(Three Bala Plaza East, Suite 400,
13	RITE AID CORPORATION,)		13	Bala Cynwyd, Pennsylvania 19004,
14	Plaintiffs,)		14	610-822-0276), by:
15	-vs-) No. C-03-781		15	MR. KENDALL S. ZYLSTRA,
16	WYETH,)		16	appeared on behalf of the Plaintiff
17	Defendant.)		17	Class of Direct Purchasers;
18			18	
19			19	
20	THE VIDEOTAPED DEPOSITION OF KEITH LEFFLER		20	
21	VOLUME II		21	
22	NOVEMBER 3, 2004		22	
23			23	
24			24	
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4	The videotaped deposition of KEITH LEFFLER,			
5	called by the Defendant for examination, taken			
6	pursuant to the Federal Rules of Civil Procedure of			
7	the United States District Courts pertaining to the			
8	taking of depositions, taken before CORINNE T.			
9	MARUT, C.S.R. No. 84-1968, a Notary Public within			
10	and for the County of DuPage, State of Illinois,			
11	and a Certified Shorthand Reporter of said state,			
12	at the offices of Winston & Strawn, Suite 4500, 35			
13	West Wacker Drive, Chicago, Illinois, on the 3rd			
14	day of November, A.D. 2004, commencing at 9:05 a.m.			
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1 (Pages 1 to 4)

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<p style="text-align: right;">Page 181</p> <p>1 through 1998?</p> <p>2 A. Yes. I don't have any reason to think 3 it would affect its pricing calculus. But I would 4 expect it to take it into account.</p> <p>5 Q. All right. And in response to a number 6 of my questions, you say that, for example, 7 Mr. Edinburg, you said that he was just wrong. But 8 in fact --</p> <p>9 A. I can't say he is wrong. In my opinion 10 he's wrong.</p> <p>11 Q. But if Wyeth's beliefs were wrong and, 12 in fact, that was the reason why Wyeth did price 13 the product the way it did, that would not be -- 14 that would not be an anti- -- that the price 15 increases that it then took would not have been 16 caused by the -- the contracts that you talk about 17 as being anticompetitive, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, in -- in paragraph 33 on page 22.</p> <p>20 A. Okay.</p> <p>21 Q. You say, the very last line, "Wyeth's 22 market power was increased as a result of its 23 efforts to strengthen and enforce its contractual 24 barriers and impede Cenestin's entry."</p>	<p style="text-align: right;">Page 183</p> <p>1 A. In a static sense, yes, at a point in 2 time, yes.</p> <p>3 Q. In the sense of before Cenestin was on 4 the market, Wyeth had more market power, right?</p> <p>5 A. It faced less substitutes.</p> <p>6 Q. All right. Now, you say in -- this is 7 footnote 40 on page 22, if I understand this right. 8 You say that "It was only in early 1999, not long 9 before the price increases at issue, that Wyeth 10 learned its sole conjugated estrogen provision 11 would be applicable to Cenestin"?</p> <p>12 A. Yes.</p> <p>13 Q. So, here you're saying that Wyeth didn't 14 understand that it had effective contracts for 15 Cenestin until sometime, what, in 1999, early '99?</p> <p>16 A. Well, this particular provision of the 17 contracts.</p> <p>18 Q. So, Wyeth didn't know it had these 19 provisions until sometime in early 1999?</p> <p>20 A. No, it knew it had the provisions. It 21 didn't know the FDA was going to label Cenestin as 22 a -- as a conjugated estrogen.</p> <p>23 Q. Okay. So, until early 1999 Wyeth didn't 24 know that it had a contract that would be effective</p>
<p style="text-align: right;">Page 182</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Now, is it true, sir, that -- certainly 4 it's not the case that Wyeth's market power 5 increased over the period when Cenestin wasn't on 6 the market, right?</p> <p>7 A. I'm sorry?</p> <p>8 Q. I mean, it's -- you're talking about 9 Wyeth's market power increasing as a result of its 10 efforts to strengthen and enforce its contractual 11 barriers impeding Cenestin's entry. That's the 12 last sentence of your paragraph 33.</p> <p>13 A. Yes.</p> <p>14 Q. I guess what I'm wondering is: Isn't it 15 true that Wyeth actually had more market power in 16 the period before Cenestin was even on the market?</p> <p>17 A. Holding constant the -- I certainly 18 agree with you that a firm has more market power, 19 everything else the same, the fewer and less strong 20 the competitors it faces.</p> <p>21 Q. Okay. But when you say holding 22 everything else the same, in this case in the 23 actual world Wyeth did have more market power 24 before Cenestin was on the market, correct?</p>	<p style="text-align: right;">Page 184</p> <p>1 against Cenestin because it didn't know that the 2 product was going to be labeled a conjugated 3 estrogen?</p> <p>4 A. No, it had its rebate provisions in 5 place. Its rebate provisions were independent of 6 whether Cenestin was a sole conjugated estrogen or 7 not. It also had sole conjugated estrogen 8 provisions.</p> <p>9 Q. Oh, in paragraph 35, you talk about how 10 "James suggests that these programs," which I think 11 are --</p> <p>12 A. Okay, I see.</p> <p>13 Q. This is the shared success and the 14 market share contracts and so on.</p> <p>15 -- "would not have impacted Premarin's 16 pricing until many months after the entry of 17 Cenestin."</p> <p>18 And you say, "This ignores the vast 19 experience that Wyeth had in the market. In my 20 opinion, it's reasonable to assume that Wyeth would 21 be able to anticipate the impact of its programs, 22 policies and offensive responses to Cenestin."</p> <p>23 Right?</p> <p>24 A. Um-hmm.</p>

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<p>1 Q. And the enforcement mechanisms that 2 you're talking about are what, like market share 3 agreements and that type of thing?</p> <p>4 A. Yes.</p> <p>5 Q. Now, again, you haven't yourself made a 6 foreclosure analysis, right?</p> <p>7 A. If by foreclosure analysis you mean an 8 analysis of exclusive contracts and the extent of 9 market foreclosed by such exclusive contracts, 10 since I don't view these as exclusive contracts I 11 have not. If you mean something else, I don't 12 know.</p> <p>13 Q. Okay. And you don't know whether or not 14 there were in effect NDC blocks or not, correct?</p> <p>15 A. Right.</p> <p>16 Q. And we talked before, you said a new 17 rebate deal with retailers, that Shared Success 18 program. Is that another one of the enforcement 19 mechanisms that you're talking about?</p> <p>20 A. No, I don't think I'm -- not in this 21 context.</p> <p>22 Q. What evidence are you aware of that 23 Wyeth knew at the time of Cenestin's launch which 24 enforcement mechanisms MCOs would actually have in</p>	Page 185	<p>1 that -- that I said, gee, I either screwed up that 2 answer or I was misquoted.</p> <p>3 (WHEREUPON, a certain document was 4 marked Leffler Deposition Exhibit 5 No. 11, for identification, as of 6 11/3/04.)</p> <p>7 BY MR. DOBIE:</p> <p>8 Q. Let me show you what's been marked as 9 Exhibit 11, and for the record Exhibit 11 is a copy 10 of your deposition, correct, sir?</p> <p>11 A. It is.</p> <p>12 Q. And you were asked some questions about 13 a document that you reference in paragraph 36? You 14 say in 36, "Both Professor Carlton and Professor 15 James claim that I've misinterpreted the Wyeth 16 document."</p> <p>17 A. Yes, I just had to get the context. 18 Yes, I now know the document you're talking about.</p> <p>19 Q. All right. And that was a document -- 20 that's the Strickland memo. Do you remember that?</p> <p>21 A. I remember the memo, yeah.</p> <p>22 Q. And did you read your testimony that 23 you -- that you gave and do you remember testifying 24 about the Strickland memo at length in your prior</p>	Page 187
<p>1 place with -- at the time of the launch of 2 Cenestin?</p> <p>3 A. It had in place its rebate contracts, 4 and it was aware that it had in place its rebate 5 contracts and I would certainly expect that Wyeth 6 would know that such contractual provisions, when 7 it understood the type of entry that Cenestin was 8 coming in with, would be effective at curtailing 9 that entry.</p> <p>10 Q. All right. Certainly it had no prior 11 experience with the sole conjugated estrogen 12 language, though, right?</p> <p>13 A. Yes. I only hesitate because I'm not 14 sure about in the early 90s, but I don't think 15 it's relevant.</p> <p>16 Q. Now, since your -- since your last 17 deposition, sir, did you get a copy of the 18 transcript?</p> <p>19 A. Yes.</p> <p>20 Q. Did you review it?</p> <p>21 A. Yes.</p> <p>22 Q. Did you have any changes?</p> <p>23 A. I don't recall. I mean, there were 24 typos, the usual stuff. I didn't recall anything</p>	Page 186	<p>1 deposition?</p> <p>2 A. I remember you asking me about it. I 3 read the whole thing so I'm sure I read it.</p> <p>4 Q. Did you have any changes to any of the 5 answers that you gave in response to the questions 6 I asked you about the Strickland memo, what we 7 marked as Exhibit 5 from your prior deposition?</p> <p>8 A. I don't recall that I -- I didn't make 9 any. I don't recall when I read it if I -- there 10 was nothing that I thought was worthy of making a 11 formal change.</p> <p>12 Q. Oh. In paragraph 38 on page 25, you 13 talk about the -- how competition from a branded 14 competitor is different from a generic competition. 15 We have covered some of this already.</p> <p>16 A. Yes.</p> <p>17 Q. And you reference how Professor James 18 has come up with five illustrative events that 19 provide information or don't provide information 20 relative to the expected reaction of Wyeth to the 21 entry of Cenestin absent the anticompetitive 22 contractual provisions, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And let me show you these documents I</p>	Page 188